

IFW

PATENT APPLICATION
Attorney Docket No. 103419-0003

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Epley, John M.

Serial No. 10/715,871

Examiner: Hoekstra, Jeffrey G.

Confirmation No. 5600

Filed: 17 November 2003

Group Art Unit: 3736

For: HEAD-STABILIZED MEDICAL APPARATUS, SYSTEM AND METHODOLOGY

Date: 9 May 2008

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Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

MAY 14 2008

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**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
UNDER 37 C.F.R. § 1.181(a)**

Responsive to the Notice of Abandonment mailed 14 April 2008, please find applicant's Petition to Withdraw the Holding of Abandonment and supporting documents, as follows:

Remarks/Arguments begin on page 2 of this paper.

Appendices attached following page 4 of this paper, including:

Appendix A - USPTO fax confirmation of receipt of RCE and Preliminary Amendment;

Appendix B - a Public PAIR printout from the Transaction History for application number 10/715,871, showing USPTO initiation of processing of applicant's RCE on 28 November 2007;

Appendix C - a Public PAIR printout of the File Wrapper for incorrect application number 11/715,871 to which applicant's submitted documents were erroneously recorded, showing applicants submitted documents received and recorded on 28 November 2007; and,

Appendix D - copies of applicant's submitted documents, printed from the Public PAIR File Wrapper of incorrect application number 11/715,871, each bearing a USPTO-applied stamp confirming receipt on 28 November 2007.

REMARKS

Applicant hereby requests and petitions for withdrawal of the holding of abandonment of the application identified above based upon the facts presented below. Applicant respectfully submits that the holding of abandonment was improper and caused entirely by errors of the Office.

History:

Applicant received a Final Office Action dated 31 July 2007 from the USPTO. After filing an After Final Office Action (17 August 2007) and a Pre-Appeal Brief (7 September 2007), and receiving a Notice of Panel Decision (dated 2 November 2007) from the Office, applicant timely filed by facsimile, on 28 November 2007, each of a Request for Continued Examination (RCE) and a Preliminary Amendment with a request and proper fee for a one month extension of time. Applicant's facsimile cover sheet included the message, "Please find following a Request for Continued Examination, Preliminary Amendment and Request for Extension of time for patent application no. 11/715,871".

Subsequently, on 9 April 2008, applicant received a telephone call from Examiner Hoekstra, asking if this application had been intentionally abandoned by applicant. Applicant was surprised, and stated that there was no intent whatsoever to abandon the application, and asked the basis for the abandonment. Examiner Hoekstra informed applicant that the abandonment was caused by a failure to respond to an Office Action within the statutory period for response. Applicant informed Examiner Hoekstra that such reply in the form of an RCE and Preliminary Amendment had been timely filed on 28 November 2007, and was received by the Office as indicated a received facsimile confirmation and an entry in Public PAIR. Examiner Hoekstra informed the applicant that no such documents appeared in the file wrapper, and suggested that they may have been scanned and associated with a different application number.

Applicant inquired as to the appropriate actions to take to have applicant's 28 November 2007 submission properly processed and acted upon by the Office. Examiner Hoekstra informed applicant that a Petition to Revive for Unintentional Abandonment must be submitted, along with all of the previously submitted materials, including the RCE, Preliminary Amendment, and extension of time request, along with any materials supporting applicant's petition.

Applicant subsequently received a Notice of Abandonment dated 14 April 2008 which incorrectly indicated that the "Application is abandoned in view of: No reply has been received". However, the Office's records disprove this assertion.

Relevant Facts:

Shortly after submitting the above listed materials by facsimile, applicant received a “return receipt confirmation of the facsimile transmission” (receive confirmation) from the Office (see attached) in the form of an “Auto-Reply Facsimile Transmission”. The receipt confirmation specified that sixteen (16) pages were received by the Office at 2:58PM (EST) on 28 November 2007 (see APPENDIX A). Within a reasonable time following applicant’s submission of the RCE and other listed materials, applicant confirmed at the ‘Transaction History’ page of Public PAIR the following entry, “11-28-2007 Workflow – Request for RCE – Begin”, (see APPENDIX B). Thus, applicant reasonably believed processing of applicant’s submission had begun, although applicant understood that a subsequent Office Action would not be forthcoming within a particularly defined period of time.

Additionally, the USPTO Deposit Account Statement for applicant’s representative’s deposit account (#012704) shows that on 29 November 2007, both the \$405 RCE fee and the \$60 extension of time fee were withdrawn from applicant’s representative’s deposit account. This activity proves that documents included in applicant’s facsimile transmission were received and acted upon by at least one department within the Office.

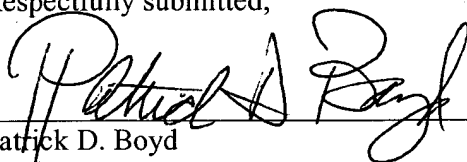
Although the Public PAIR system clearly shows that the request for RCE was received on 28 November 2007, Public PAIR does not show any of the received documents having been entered into the Image File Wrapper. However, applicant searched Public PAIR for the submitted documents, and located all sixteen pages of applicant’s RCE, Preliminary Amendments, and related documents submitted on 28 November 2007. These documents are erroneously associated with, and found in the File Wrapper (see APPENDIX C) of application number, 11/715,871 (rather than applicant’s application number 10/715,871).

Applicant has reviewed each of the submitted documents, and confirmed that each includes the correct application number (10/715,871) with the exception of the facsimile cover sheet (see APPENDIX D). Thus, inasmuch as the Office failed to associate each document with the application number correctly identified thereupon, applicant did not cause the loss of the documents following their complete and successful transmission to the Office. The presence of applicant’s submitted documents on Public PAIR, albeit erroneously associated with an unrelated application number, conclusively proves that applicant timely filed a full and complete response to the 2 November 2007 Office Action, and that the holding of abandonment was improper and caused entirely by inadvertent errors of the Office.

CONCLUSION

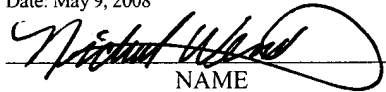
Accordingly, applicant respectfully requests and petitions for withdrawal of the holding of abandonment of the application number 10/715,871, and requests that prosecution reopen and continue without further delays. The Examiner is encouraged to telephone the undersigned at (503) 226-1191 if it appears that an interview would be helpful in advancing the case.

Respectfully submitted,


Patrick D. Boyd
Reg. No. 54,67

Customer No. 35940

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Date: May 9, 2008


NAME

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APPENDIX A

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Auto-Reply Facsimile Transmission

TO:

Fax Sender at 5032260079

Fax Information

Date Received:

11/28/2007 2:58:39 PM [Eastern Standard Time]

Total Pages:

16 (including cover page)

ADVISORY: This is an automatically generated return receipt confirmation of the facsimile transmission received by the Office. Please check to make sure that the number of pages listed as received in Total Pages above matches what was intended to be sent. Applicants are advised to retain this receipt in the unlikely event that proof of this facsimile transmission is necessary. Applicants are also advised to use the certificate of facsimile transmission procedures set forth in 37 CFR 1.8(a) and (b), 37 CFR 1.6(f). Trademark Applicants, also see the Trademark Manual of Examining Procedure (TMEP) section 306 et seq.

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11/28/2007 11:58 FAX 5032260078

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001/016

ATERWYNNE LLP
ATTORNEYS AT LAW

Suite 1800
222 S.W. Columbia
Portland, OR 97201-6618
503-226-1191
Fax 503-226-0079
www.aterwynne.com

FACSIMILE TRANSMITTAL

Date	November 28, 2007
From	Nicholas Weintraub

To	Company	Fax	Phone
Mail Stop Amendment	United States Patent and Trademark Office	(571) 273-6300	(703) 308-9102

Document	RCE, Preliminary Amendment and Request for Extension of Time		
Pages	15 (including cover)	AN ORIGINAL OF THIS FAX WILL <input type="checkbox"/> WILL NOT <input checked="" type="checkbox"/> FOLLOW.	

Message
Please find following a Request for Continued Examination, Preliminary Amendment and Request for Extension of time for patent application no. 11/715,871.

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APPENDIX B



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10/715,871

Head-stabilized medical apparatus, system and methodology

P

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Transaction History

Date	Transaction Description
11-28-2007	Workflow - Request for RCE - Begin
11-02-2007	Mail Appeals conf. Proceed to BPAI
11-01-2007	Pre-Appeals Conference Decision - Proceed to BPAI
09-07-2007	Request for Pre-Appeal Conference Filed
09-07-2007	Notice of Appeal Filed
08-30-2007	Mail Advisory Action (PTOL - 303)
08-29-2007	Advisory Action (PTOL-303)
08-23-2007	Date Forwarded to Examiner
08-17-2007	Amendment after Final Rejection
07-31-2007	Mail Final Rejection (PTOL - 326)
07-25-2007	Final Rejection
05-30-2007	Date Forwarded to Examiner
05-23-2007	Response after Non-Final Action
04-11-2007	Mail Non-Final Rejection
04-11-2007	Correspondence Address Change
04-06-2007	Non-Final Rejection
03-13-2007	Date Forwarded to Examiner
03-13-2007	Mail Appeals conf. Reopen Prosec.
03-12-2007	Pre-Appeals Conference Decision - Reopen Prosecution
01-19-2007	Request for Pre-Appeal Conference Filed
01-19-2007	Notice of Appeal Filed
01-10-2007	Mail Advisory Action (PTOL - 303)
01-08-2007	Advisory Action (PTOL-303)
01-06-2007	Date Forwarded to Examiner
12-12-2006	Amendment after Final Rejection
10-23-2006	Correspondence Address Change
10-23-2006	Change in Power of Attorney (May Include Associate POA)
10-23-2006	Mail Final Rejection (PTOL - 326)
10-18-2006	Final Rejection
10-05-2006	Miscellaneous Incoming Letter
08-22-2006	Date Forwarded to Examiner
08-17-2006	Response after Non-Final Action
08-08-2006	Mail Notice of Informal or Non-Responsive Amendment
08-07-2006	Date Forwarded to Examiner
07-27-2006	Informal or Non-Responsive Amendment after Examiner Action
07-27-2006	Response after Non-Final Action
07-27-2006	Request for Extension of Time - Granted
02-22-2006	Mail Non-Final Rejection
02-17-2006	Non-Final Rejection
11-06-2004	Information Disclosure Statement considered
12-01-2003	Information Disclosure Statement considered
11-17-2003	Information Disclosure Statement considered
02-06-2006	Date Forwarded to Examiner
01-23-2006	Response to Election / Restriction Filed
01-23-2006	Miscellaneous Incoming Letter
12-22-2005	Mail Restriction Requirement
12-21-2005	Requirement for Restriction / Election
10-06-2005	Correspondence Address Change
09-07-2005	Case Docketed to Examiner in GAU
11-06-2004	Preliminary Amendment
11-06-2004	Reference capture on IDS
11-06-2004	Information Disclosure Statement (IDS) Filed
11-06-2004	Information Disclosure Statement (IDS) Filed
12-01-2003	Reference capture on IDS
11-17-2003	Reference capture on IDS
11-06-2004	Preliminary Amendment
11-06-2004	Workflow incoming amendment IFW
07-08-2004	IFW TSS Processing by Tech Center Complete

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12-01-2003	Information Disclosure Statement (IDS) Filed
12-01-2003	Information Disclosure Statement (IDS) Filed
11-17-2003	Information Disclosure Statement (IDS) Filed
11-17-2003	Information Disclosure Statement (IDS) Filed
07-08-2004	Case Docketed to Examiner in GAU .
02-17-2004	Application Is Now Complete
02-13-2004	Application Return from OIPE
02-13-2004	Application Return TO OIPE
02-17-2004	Application Is Now Complete
02-12-2004	Application Dispatched from OIPE .
02-13-2004	Application Is Now Complete
02-03-2004	Cleared by OIPE CSR
12-22-2003	IFW Scan & PACR Auto Security Review
11-17-2003	Initial Exam Team nn

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11/715,871

Sigma-delta modulator

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Mail Room Date	Document Description	Page Count	Select All	Start Download	Clear All
04-08-2008	Notice of Change of Address placed in File Wrapper due to EBC Customer Number update	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	Non-Final Rejection	6	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	List of references cited by examiner	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	Index of Claims	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	List of References cited by applicant and considered by examiner	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	Examiner's search strategy and results	4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	Bibliographic Data Sheet	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-21-2008	Search information including classification, databases and other search related notes	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-06-2008	Examiner's search strategy and results	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11-28-2007	Request for Continued Examination (RCE)	2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11-28-2007	Amendment Submitted/Entered with Filing of CPA/RCE	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11-28-2007	Claims	10	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11-28-2007	Applicant Arguments/Remarks Made in an Amendment	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11-28-2007	Extension of Time	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11-28-2007	Miscellaneous Incoming Letter	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
09-13-2007	Notice of Publication	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
04-05-2007	Filing Receipt	3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
04-05-2007	Pre-Exam Formalities Notice	1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-09-2007	Transmittal of New Application	2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-09-2007	Authorization for Extension of Time all replies	2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-09-2007	Specification	9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
03-09-2007	Claims	2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

03-09-2007	Abstract	1	<input type="checkbox"/>
03-09-2007	Oath or Declaration filed	2	<input type="checkbox"/>
03-09-2007	Drawings-only black and white line drawings	5	<input type="checkbox"/>
03-09-2007	Fee Worksheet (PTO- 06)	1	<input type="checkbox"/>
03-09-2007	Fee Worksheet (PTO- 06)	1	<input type="checkbox"/>
03-09-2007	Information Disclosure Statement (IDS) Filed	3	<input type="checkbox"/>
03-09-2007	Certified Copy of Foreign Priority Application	21	<input type="checkbox"/>
03-09-2007	NPL Documents	14	<input type="checkbox"/>
03-09-2007	NPL Documents	17	<input type="checkbox"/>

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Date	November 28, 2007
From	Nicholas Weintraub

To	Company	Fax	Phone
Mail Stop Amendment	United States Patent and Trademark Office	(571) 273-8300	(703) 308-9102

Document	RCE, Preliminary Amendment and Request for Extension of Time		
Pages	15 (including cover)	AN ORIGINAL OF THIS FAX WILL ____ WILL NOT <u>X</u> FOLLOW.	

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